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JAN 19 1994

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Petition for Rulemaking to ) RM 8392  
Adopt a Uniform Definition )  
of Facilities-Based Carriers )

DOCKET FILE COPY ORIGINAL

REQUEST FOR ACCEPTANCE OF LATE-FILED COMMENTS

American Telephone and Telegraph Company ("AT&T")  
hereby requests that the Commission accept for filing the  
attached Comments concerning the above-referenced Petition  
for Rulemaking of IDB Communications Group, Inc. ("IDB").

AT&T was not aware that IDB's Petition had been placed  
on the public record until January 13, 1994. The AT&T  
attorney responsible for this matter was informed on January  
14, 1994 of the public notice and immediately prepared the  
attached comments. The Commission offices were closed on  
Monday, January 17, 1994, and AT&T offices in New Jersey  
were closed on Tuesday, January 18, 1994, due to a snow  
emergency. AT&T hereby requests permission to file such  
comments with the Commission on January 19, 1994, the  
earliest day possible.

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Acceptance of AT&T's Comments will ensure a complete record in this matter. Moreover, because no party filed comments or reply comments in this proceeding, no party would be prejudiced by the filing of AT&T's comments out of time. Further, IDB would have the opportunity to reply to these comments.

Respectfully submitted,

AMERICAN TELEPHONE AND TELEGRAPH COMPANY

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Dated: January 19, 1994

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COMMENTS

American Telephone and Telegraph Company ("AT&T") submits the following comments in response to the above-referenced Petition for Rulemaking filed by IDB Communications Group, Inc. ("IDB"). IDB's proposed rulemaking would serve no purpose, as the reasons advanced by IDB are presently at issue in other dockets. Despite IDB's reluctance to accept the Commission's International Resale Order<sup>1</sup>, the Commission already has made clear which carriers are subject to that order. Further, the Commission presently has an existing rulemaking (Docket 93-157) which will address IDB's concern as to which carriers are required to file international circuit status reports. The proposed rulemaking thus would serve no purpose and would waste valuable Commission time and resources.

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<sup>1</sup> 7 FCC Rcd 559 (1992).

I. THE COMMISSION HAS CLEARLY DEFINED "FACILITIES-BASED CARRIERS" FOR PURPOSES OF THE INTERNATIONAL RESALE ORDER AND NEED NOT DO SO AGAIN IN A RULEMAKING

As IDB acknowledges (Pet. at 4), the Commission spelled out in its Order on Reconsideration of the International Resale Order<sup>2</sup> that, in addition to carriers that owned their transmission facilities, common carriers acquiring capacity from separate satellite systems or private cable facilities, or acquiring INTELSAT space segment from COMSAT, would be treated as facilities-based carriers for purposes of the International Resale Order. (7 FCC Rcd at 7931.) The Commission thus has made clear that carriers, such as WorldCom's European affiliates, obtaining private line service from entities other than COMSAT, separate satellite systems, or private cable systems are not facilities-based carriers and violate the International Resale Order when they provide basic telecommunications services into the U.S. over these private lines. No need therefore exists to "clarify" which entities are "facilities-based carriers" for purposes of the International Resale Order.

IDB proposes, however, that the Commission expand the definition of "facilities-based carrier" to include an "international communications service provider . . . which

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<sup>2</sup> *Regulation of International Accounting Rates*, CC Docket No. 90-337 Phase II, Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 7 FCC Rcd 7927 (1992).

obtains the maximum interest permitted by law in such facilities or capacity from an entity with an ownership interest." (Pet. at 8.) IDB's proposed definition would vitiate the meaning of facilities-based carrier. In fact, under IDB's proposal, a reseller operating in a market where facilities-based competition is prohibited would be deemed "facilities-based" in the U.S. because it "obtained the maximum interest permitted by law." IDB's nonsensical proposal should be rejected and reveals again IDB's far-reaching attempts to retroactively legitimize its continuous violation of the International Resale Order.

The Commission issued its International Resale Order because it found that allowing one-way resale into the U.S. over private lines interconnected to the U.S. public switched network contravened the U.S. public interest. Adopting IDB's proposed definition would legitimize exactly the behavior the Commission proscribed in the International Resale Order, and would hamper U.S. efforts to promote open telecommunications markets world-wide. IDB thus proposes that, in those markets that restrict facilities-based competition and do not offer equivalent opportunities to U.S. carriers (*i.e.*, those markets where the maximum interest permitted by law would be an international private line interconnected to the PSN only at the U.S. end), foreign carriers would be permitted to provide basic

telecommunications services into the U.S. over international private lines.<sup>3</sup> U.S. carriers, however, would not be able to provide similar services into the foreign country over interconnected private lines. As a result, foreign customers would benefit at the expense of U.S. customers, precisely what the Commission sought to avoid through the equivalency requirement imposed by the International Resale Order. The Commission should not permit such a result.

II. THE COMMISSION'S RULEMAKING PROCEEDING IN DOCKET NO. 93-157 WILL CLARIFY WHICH CARRIERS ARE REQUIRED TO FILE INTERNATIONAL CIRCUIT STATUS REPORTS

On July 2, 1993, the Commission instituted a rulemaking proceeding to determine which international carriers should be required to file international circuit status reports, as well as the details of such reports. In that proceeding, IDB attempted to take advantage of the Commission's efforts to clarify and reduce the reporting requirements of international carriers by proposing that the Commission change its definition of facilities-based international carriers in order to advance IDB's defense of its World

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<sup>3</sup> Presumably, as "facilities-based carriers" the foreign carriers would be required to establish accounting rates with their U.S. "correspondents", i.e., the provider of the U.S. half-circuit. The application of settlements to private line arrangements raises a novel policy issue, and, in any event, is not a permissible option for a carrier to employ to avoid the equivalency requirement of the International Resale Order. See AT&T Objection to IDB/WorldCom ISP Waiver Requests, File Nos. USP-93-W-208, USP-93-W-209 (June 10, 1993).

Communications, Inc. ("WorldCom") subsidiary and European WorldCom affiliates in pending Commission proceedings.<sup>4</sup> Because the purpose of that rulemaking was to determine which carriers should be subject to the Commission's reporting requirements, AT&T responded that the Commission should not consider IDB's broader request in the context of that rulemaking. Instead, AT&T suggested that the expression "facilities-based carrier" used in Rule 43.82 be interpreted to include only those carriers that are required to file international circuit status reports.

The Commission has ample opportunity in its existing rulemaking proceeding to determine which international carriers are required to file international circuit status reports. Thus, IDB's purported reason for its proposed rulemaking -- to clarify reporting obligations -- is already before the Commission. Indeed, the real thrust of IDB's petition is yet again to seek to have the Commission adopt a definition of facilities-based carrier that would retroactively excuse IDB's ongoing violation of the International Resale Order.

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<sup>4</sup> IDB Comments in Docket No. 93-157 filed September 1, 1993. WorldCom has been found by the Commission to have violated the *International Resale Order*. *World Communications, Inc.*, NAL/Acct No. 216E10001, 8 FCC Rcd 755 (1992). AT&T also has filed a formal complaint with the Commission accusing WorldCom and its European affiliates of violating the *International Resale Order*. *AT&T v. World Communications, Inc., et al.*, E-93-103 (9/24/93).

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CONCLUSION

The Commission already has made clear which carriers are facilities-based carriers for purposes of the International Resale Order. Further, the existing rulemaking in Docket 93-157 will clarify which carriers must file international circuit status reports, and what details are required in such reports. IDB's proposed rulemaking thus would serve no purpose and would needlessly waste valuable Commission time and resources. The lack of need for the proposed rulemaking is also evidenced by the fact that no carrier has filed in support of IDB's proposal. The Commission therefore should not institute such a rulemaking. However, should the Commission determine that such a rulemaking would have the benefit of clarifying again the scope of the International Resale Order, the Commission should not adopt IDB's proposed definition of a "facilities-based carrier".

Respectfully submitted,

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Dated: January 19, 1994



CERTIFICATE OF SERVICE

I, Josephine Mendez, do hereby certify that a copy of American Telephone and Telegraph Company's Request for Acceptance of Late-Filed Comments and Comments, dated January 19, 1994, has been sent by United States mail, postage prepaid, to the following:

s/a Josephine Mendez  
Josephine Mendez

Dated: January 19, 1994

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